

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, Colorado 80202	EFILED Document CO Denver County District Court 2nd JD Filing Date: Jan 25 2011 4:03PM MST Filing ID: 35577997 Review Clerk: Imran Sufi
PLAINTIFFS: Anthony Lobato, et al. and PLAINTIFFS-INTERVENORS: Armandina Ortega, et al. vs. DEFENDANTS: The State of Colorado; et al.	<input type="checkbox"/> COURT USE ONLY <input type="checkbox"/>
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ANSWER TO AMENDED COMPLAINT IN INTERVENTION	

Defendants, by and through their counsel, hereby answer the Amended Complaint in Intervention. As to Plaintiff-Intervenors' introductory paragraph, to the extent that an answer is required, Defendants admit that Plaintiff-Intervenors are challenging the constitutionality of the public school finance system in Colorado and are seeking declaratory and injunctive relief, but deny that Plaintiff-Intervenors are entitled to such relief. Defendants deny the remaining allegations of the introductory paragraph. To the extent that only some Plaintiff-Intervenor students are low-income or English Language Learner students, Defendants specifically deny that those Plaintiff-Intervenor students who are not low-income or English Language Learner students have standing or the right to raise claims on behalf of groups of which they are not a part.

I. BACKGROUND

1. Defendants admit the allegations of Paragraph 1 of the Amended Complaint in Intervention, but deny the accuracy of Plaintiffs' and Plaintiff-Intervenors' claims.

2. Defendants admit that the Colorado Supreme Court remanded the case by decision dated October 19, 2009. The remaining allegations of Paragraph 2 of the Amended Complaint in Intervention contain an incomplete and inaccurate summary of the Supreme Court's decision, which is the best evidence of its contents, and therefore Defendants deny the remaining allegations of Paragraph 2.

3. Defendants admit the allegations of Paragraph 3 of the Amended Complaint in Intervention, but deny the accuracy of Plaintiff-Intervenors' claims and that Plaintiff-Intervenors are entitled to the relief requested.

II. JURISDICTION AND VENUE

4. Defendants admit that article VI, section 9(1) of the Colorado Constitution gives this Court general jurisdiction and original jurisdiction over civil matters. Nothing in this answer waives Defendants' affirmative defense that Plaintiff-Intervenors lack standing to seek declaratory or injunctive relief in this matter.

5. Defendants admit the allegations of Paragraph 5 of the Amended Complaint in Intervention.

III. PARTIES

6. Defendants lack information sufficient to admit or deny the allegations of Paragraph 6 of the Amended Complaint in Intervention, and therefore deny them.

7. Defendants lack information sufficient to admit or deny the allegations of Paragraph 7 of the Amended Complaint in Intervention, and therefore deny them.

8. Defendants lack information sufficient to admit or deny the allegations of Paragraph 8 of the Amended Complaint in Intervention, and therefore deny them.

9. Defendants lack information sufficient to admit or deny the allegations of Paragraph 9 of the Amended Complaint in Intervention, and therefore deny them.

10. Defendants lack information sufficient to admit or deny the allegations of Paragraph 10 of the Amended Complaint in Intervention, and therefore deny them.

11. Defendants lack information sufficient to admit or deny the allegations of Paragraph 11 of the Amended Complaint in Intervention, and therefore deny them.

12. Defendants lack information sufficient to admit or deny the allegations of Paragraph 12 of the Amended Complaint in Intervention, and therefore deny them.

13. Defendants lack information sufficient to admit or deny the allegations of Paragraph 13 of the Amended Complaint in Intervention, and therefore deny them.

14. Defendants deny that the named party “State of Colorado” is responsible for enacting laws that form the Colorado school finance system. The General Assembly, which is not a party to this case, is the branch of Colorado’s government that enacts laws. Defendants further deny that the State of Colorado or the General Assembly exercises complete discretionary control of the school finance system. Several provisions of the Colorado Constitution, including article X, section 20, also impact the school finance system.

15. Paragraph 15 of the Amended Complaint in Intervention purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 15 misstates and mischaracterizes Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

16. Defendants deny that Dwight D. Jones is the Commissioner of Education of the State of Colorado or that he is “the chief state school officer and executive officer of the department of education.” Defendants admit the remaining allegations of Paragraph 16 of the Amended Complaint in Intervention.

17. Defendants deny that Bill Ritter is the Governor of the State of Colorado or that he is vested with supreme executive power of the State and is responsible for ensuring that the laws of the State of Colorado are faithfully executed. Defendants admit the remaining allegations of Paragraph 17 of the Amended Complaint in Intervention.

IV. FACTS

A. Thorough and Uniform System

18. Paragraph 18 of the Amended Complaint in Intervention purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 18 misstates and mischaracterizes the Colorado Constitution, which is the best evidence of its contents, and therefore Defendants deny those allegations.

19. Paragraph 19 of the Amended Complaint in Intervention purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants admit that the quoted language is found in the Colorado Constitution and deny the remaining allegations.

20. Paragraph 20 of the Amended Complaint in Intervention purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 20 contains an incomplete and inaccurate summary of the Colorado Constitution, which is the best evidence of its contents, and therefore Defendants deny those allegations.

21. Paragraph 21 of the Amended Complaint in Intervention purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants admit that Plaintiff-Intervenors are asserting some of the same claims as the Lobato Plaintiffs. Defendants deny the accuracy of those claims and the remaining allegations of Paragraph 21 of the Amended Complaint in Intervention.

22. Paragraph 22 of the Amended Complaint in Intervention purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants admit that Plaintiff-Intervenors are asserting some of the same claims as the Lobato Plaintiffs. Defendants deny the accuracy of those claims and the remaining allegations of Paragraph 22 of the Amended Complaint in Intervention.

23. Paragraph 23 of the Amended Complaint in Intervention purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 23 contains an incomplete and inaccurate summary of the Colorado Constitution, which is the best evidence of its contents, and therefore Defendants deny those allegations.

B. Basic School Finance Structure

24. Paragraph 24 of the Amended Complaint in Intervention purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 24 contains an incomplete and inaccurate summary of Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

25. Paragraph 25 of the Amended Complaint in Intervention purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 25 contains an incomplete and inaccurate summary of Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

26. Paragraph 26 of the Amended Complaint in Intervention purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 26 contains an incomplete and inaccurate summary of Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

27. Paragraph 27 of the Amended Complaint in Intervention purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 27 contains an incomplete and inaccurate summary of Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

28. Paragraph 28 of the Amended Complaint in Intervention purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 28 contains an incomplete and inaccurate summary of Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

29. Paragraph 29 of the Amended Complaint in Intervention purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants deny the allegations of Paragraph 29 to the extent that they are an incomplete and inaccurate summary of Colorado law, which is the best evidence of its contents.

30. Paragraph 30 of the Amended Complaint in Intervention purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants deny the allegations to Paragraph 30 to the extent that they are an incomplete and inaccurate summary of the Colorado Constitution, which is the best evidence of its contents.

31. Defendants admit that the Gallagher Amendment was adopted in 1982. The remaining allegations of Paragraph 31 of the Amended Complaint in Intervention purport to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants deny the remaining allegations of Paragraph 31 to the extent that they are an incomplete and inaccurate summary of the Colorado Constitution, which is the best evidence of its contents.

32. Paragraph 32 of the Amended Complaint in Intervention purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants deny the allegations of Paragraph 32 to the extent that they are an incomplete and inaccurate summary of the Colorado Constitution and Colorado law, which are the best evidence of their contents.

33. Paragraph 33 of the Amended Complaint in Intervention purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants admit that the quoted language is found in the Colorado Constitution but deny the allegations of Paragraph 33 to the extent that they are an incomplete and inaccurate summary of the Colorado Constitution, which is the best evidence of its contents.

34. Defendants admit that the two constitutional amendments are discussed by the Lobato Plaintiffs in their complaint, but state that the referenced allegations have been superseded by the Second Amended Complaint. Defendants fully incorporate by reference their answers to the Lobato Plaintiffs' Second Amended Complaint's allegations regarding the constitutional amendments.

C. At-Risk Students

35. Defendants deny the allegations of Paragraph 35 of the Amended Complaint in Intervention.

36. Defendants deny the allegations of Paragraph 36 of the Amended Complaint in Intervention.

37. Paragraph 37 of the Amended Complaint in Intervention purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 37 contains an inaccurate and incomplete summary of Colorado law, which is the best evidence of its contents, and therefore Defendants deny the allegations of Paragraph 37.

38. Defendants admit that different legislation and programs may apply different definitions to the term "at-risk" as identified in Paragraph 38 of the Amended Complaint in Intervention. Defendants deny the remaining allegations of Paragraph 38.

39. The first and last sentences of Paragraph 39 of the Amended Complaint in Intervention purport to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants deny the allegations in the first and last sentences of Paragraph 39. Defendants deny the remaining allegations of Paragraph 39.

40. The first two sentences and the last sentence of Paragraph 40 of the Amended Complaint in Intervention purport to state legal conclusions to which no response is required. To the extent that a response is required, Defendants state that the first two sentences of Paragraph 40 contain an inaccurate and incomplete summary of Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations. Defendants deny the remaining allegations of Paragraph 40.

41. Paragraph 41 of the Amended Complaint in Intervention misstates and mischaracterizes the 2006 Augenblick study, which is the best evidence of its contents, and therefore Defendants deny those allegations.

42. The first sentence of Paragraph 42 of the Amended Complaint in Intervention purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants deny the allegations of the first sentence of Paragraph 42. The second sentence of Paragraph 42 purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that the second sentence contains an incomplete and inaccurate summary of Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations. Defendants deny the third sentence of Paragraph 42.

43. Defendants deny the allegations of Paragraph 43 of the Amended Complaint in Intervention.

44. Paragraph 44 of the Amended Complaint in Intervention purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants deny the allegations of Paragraph 44.

45. Defendants deny the allegations of Paragraph 45 of the Amended Complaint in Intervention.

D. English Language Learner Students

46. Defendants deny the allegations of the first sentence of Paragraph 46 of the Amended Complaint in Intervention. Defendants admit the remaining allegations of Paragraph 46.

47. Defendants deny the allegations of Paragraph 47 of the Amended Complaint in Intervention.

48. The first sentence of Paragraph 48 of the Amended Complaint in Intervention purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants deny the allegations of the first sentence of paragraph 48. Defendants deny the remaining allegations of paragraph 48.

49. Paragraph 49 of the Amended Complaint in Intervention purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants deny the allegations of Paragraph 49 to the extent that they are an incomplete and inaccurate summary of Colorado law, which is the best evidence of its contents.

50. Defendants admit the allegations of Paragraph 50 of the Amended Complaint in Intervention.

51. Paragraph 51 of the Amended Complaint in Intervention purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 51 contains an incomplete and inaccurate summary of ELPA, which is the best evidence of its contents, and therefore Defendants deny those allegations.

52. Paragraph 52 of the Amended Complaint in Intervention purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 52 contains an incomplete and inaccurate summary of ELPA, which is the best evidence of its contents, and therefore Defendants deny those allegations.

53. Paragraph 53 of the Amended Complaint in Intervention purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants deny the allegations of Paragraph 53.

54. Paragraph 54 of the Amended Complaint in Intervention purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 54 contains an incomplete and inaccurate summary of ELPA, which is the best evidence of its contents, and therefore Defendants deny those allegations.

55. Paragraph 55 of the Amended Complaint in Intervention purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants deny the allegations of Paragraph 55.

56. Defendants admit that \$7.2 million in state funding was projected for ELL program in for the 2007-2008 budget year and that \$8 million was estimated for gifted and talented categorical funding for the same year. Defendants deny the remaining allegations of Paragraph 56 of the Amended Complaint in Intervention.

57. Paragraph 57 of the Amended Complaint in Intervention misstates and mischaracterizes the 2006 Augenblick study, which is the best evidence of its contents, and therefore Defendants deny the allegations of Paragraph 57.

58. Paragraph 58 of the Amended Complaint in Intervention purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants deny the allegations of Paragraph 58.

59. Paragraph 59 of the Amended Complaint in Intervention purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 59 contains an incomplete and inaccurate summary of Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

60. The first and last sentences of Paragraph 60 of the Amended Complaint in Intervention purport to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants lack information sufficient to admit or deny whether school

districts have violated or are violating federal law by using federal funds to supplant programs for ELL students and therefore deny those allegations of the first and last sentences of Paragraph 60. Defendants deny the remaining allegations of the first and last sentences of Paragraph 60. The remaining allegations of Paragraph 60 purport to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants deny the remaining allegations to the extent that they are an incomplete and inaccurate summary of the No Child Left Behind Act, which is the best evidence of its contents.

61. Paragraph 61 of the Amended Complaint in Intervention purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants deny the allegations of Paragraph 61.

62. Defendants deny the allegations of Paragraph 62 of the Amended Complaint in Intervention.

E. Preschool for ELL and At-Risk Students

63. Defendants admit that preschool programs may be helpful. Defendants deny the remaining allegations of Paragraph 63 of the Amended Complaint in Intervention.

64. Paragraph 64 of the Amended Complaint in Intervention purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 64 relies on an inaccurate and incomplete definition of “at-risk” and misstates Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

65. Paragraph 65 of the Amended Complaint in Intervention purports to state a legal conclusion to which to answer is required. To the extent that an answer is required, Defendants deny the allegations of Paragraph 65 to the extent that they misstate and mischaracterize the CPP, which is the best evidence of its contents.

66. Defendants deny the allegations of Paragraph 66 of the Amended Complaint in Intervention.

67. The first sentence of Paragraph 67 of the Amended Complaint in Intervention purports to state a legal conclusion to which no answer is required. To the extent that a response is required, Defendants deny the first sentence of Paragraph 67 to the extent that it is inconsistent with Colorado law, which is the best evidence of its contents. Defendants deny the remaining allegations of Paragraph 67.

68. Paragraph 68 of the Amended Complaint in Intervention purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants deny the allegations of Paragraph 68.

F. Facilities

69. Paragraph 69 of the Amended Complaint in Intervention purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants deny the allegations of Paragraph 69 to the extent that they are inconsistent with Colorado law, which is the best evidence of its contents.

70. Defendants admit that certain districts may need to acquire, build or repair facilities. Defendants deny the remaining allegations of Paragraph 70 of the Amended Complaint in Intervention.

71. Defendants deny the allegations of the first two sentences of Paragraph 71 of the Amended Complaint in Intervention. The remaining allegations of Paragraph 71 purport to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants state that the remaining allegations contain an inaccurate and incomplete summary of Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

72. Defendants admit that certain communities have failed to carry forward bond elections and deny the remaining allegations of Paragraph 72 of the Amended Complaint in Intervention.

73. Defendants admit that certain school districts have sought bond elections but deny the remaining allegations of the first sentence of Paragraph 73 of the Amended Complaint in Intervention. Defendants lack information sufficient to admit or deny the remaining allegations of Paragraph 73, and therefore deny them.

74. Defendants lack information sufficient to admit or deny the allegations of Paragraph 74 of the Amended Complaint in Intervention, and therefore deny them.

G. Rising Curriculum Standards, Testing and Accountability

75. Paragraph 75 of the Amended Complaint in Intervention purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 75 is an incomplete and inaccurate summary of Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

76. Paragraph 76 of the Amended Complaint in Intervention purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 76 is an incomplete and inaccurate summary of applicable law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

77. Defendants admit the allegations of Paragraph 77 of the Amended Complaint in Intervention.

78. Defendants admit that the named assessments are used by CDE and deny the remaining allegations of Paragraph 78 of the Amended Complaint in Intervention.

79. Defendants admit the allegations of the second sentence of Paragraph 79 of the Amended Complaint in Intervention and deny the remaining allegations.

80. Defendants admit the allegations of Paragraph 80 of the Amended Complaint in Intervention.

81. Defendants admit the allegations of Paragraph 81 of the Amended Complaint in Intervention.

82. Defendants admit the allegations of the first two sentences of Paragraph 82 of the Amended Complaint in Intervention. Defendants lack information sufficient to admit or deny the remaining allegations of Paragraph 82, and therefore deny them.

83. Defendants deny the allegations of Paragraph 83 of the Amended Complaint in Intervention.

84. Paragraph 84 of the Amended Complaint in Intervention purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 84 contains an incomplete and inaccurate summary of Colorado law and regulations, which are the best evidence of their contents, and therefore deny those allegations.

85. Paragraph 85 of the Amended Complaint in Intervention purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 85 contains an incomplete and inaccurate summary of the No Child Left Behind Act, which is the best evidence of its contents, and therefore Defendants deny those allegations.

86. Defendants admit the allegations of the first sentence of Paragraph 86 of the Amended Complaint in Intervention and deny the remaining allegations of Paragraph 86.

87. Defendants deny the allegations of Paragraph 87 of the Amended Complaint in Intervention.

H. Performance of ELL and Low Income Students

88. Paragraph 88 of the Amended Complaint in Intervention purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 88 is an incomplete and inaccurate summary of Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

89. Paragraph 89 of the Amended Complaint in Intervention purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants deny these and the remaining allegations of Paragraph 89.

90. Defendants lack knowledge of the year that is the purported subject of the allegations of Paragraph 90 of the Amended Complaint in Intervention and therefore lack information sufficient to admit or deny the allegations of Paragraph 90, and therefore deny them.

91. Defendants lack knowledge of the year that is the purported subject of the allegations of Paragraph 91 of the Amended Complaint in Intervention and therefore lack information sufficient to admit or deny the allegations of Paragraph 91, and therefore deny them.

92. Defendants lack knowledge of the year that is the purported subject of the allegations of Paragraph 92 of the Amended Complaint in Intervention and therefore lack information sufficient to admit or deny the allegations of Paragraph 92, and therefore deny them.

93. Defendants lack knowledge of the year that is the purported subject of the allegations of Paragraph 93 of the Amended Complaint in Intervention and therefore lack information sufficient to admit or deny the allegations of Paragraph 93, and therefore deny them.

94. Defendants deny the allegations of Paragraph 94 of the Amended Complaint in Intervention.

95. Defendants deny the allegations of Paragraph 95 of the Amended Complaint in Intervention.

96. Defendants admit that the language quoted in the first sentence of Paragraph 96 of the Amended Complaint in Intervention appears in C.R.S. § 22-7-301, but state that the quoted language is an incomplete recitation of that provision, which is the best evidence of its contents. The second sentence of Paragraph 96 purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants deny these and the remaining allegations of Paragraph 96.

97. Paragraph 97 of the Amended Complaint in Intervention contains an incomplete and inaccurate summary of the Colorado Commission for Higher Education report, which is the best evidence of its contents, and therefore Defendants deny those allegations.

V. CAUSES OF ACTION

A. Denial of a Thorough and Efficient System Under Article IX, § 2 of the Colorado Constitution

98. Defendants incorporate herein all of the preceding averments.
99. Defendants deny the allegations of Paragraph 99 of the Amended Complaint in Intervention.
100. Defendants deny the allegations of Paragraph 100 of the Amended Complaint in Intervention.
101. Defendants deny the allegations of Paragraph 101 of the Amended Complaint in Intervention.

B. Denial of Local Control Under Article IX, § 15 of the Colorado Constitution

102. Defendants incorporate herein all of the preceding averments.
103. Defendants deny the allegations of Paragraph 103 of the Amended Complaint in Intervention.
104. Defendants deny the allegations of Paragraph 104 of the Amended Complaint in Intervention.

VI. PRAYER AND RELIEF

105-110. Defendants deny that Plaintiff-Intervenors are entitled to any of the relief requested.

GENERAL DENIAL

Defendants deny all allegations not specifically admitted.

AFFIRMATIVE DEFENSES

1. Plaintiff-Intervenors' Amended Complaint in Intervention fails to state a claim upon which relief may be granted. The public school finance system as currently structured and funded is constitutional.
2. Plaintiff-Intervenors' Amended Complaint in Intervention fails to join necessary and indispensable parties. Plaintiff-Intervenors raise claims on behalf of all Colorado school

districts and all Colorado school children, but have not sought to bring this case as a class action or otherwise sought to join all Colorado school districts or all Colorado school children. Further, to the extent that Plaintiff-Intervenors, like Plaintiffs, seek an order requiring the establishment and funding of a new system of public school finance, Plaintiff-Intervenors have not named the General Assembly as a defendant in this action.

3. Plaintiff-Intervenors lack standing to the extent they assert claims on behalf of “each school district,” “all students,” all “at-risk and ELL students,” or any other person or entity not named as a Plaintiff-Intervenor. Plaintiff-Intervenors also have not alleged any injury in fact to a legally protected interest that would establish standing to seek declaratory judgment and injunctive relief on their own behalf as taxpayers, their children’s behalf as recipients of public education, or for unnamed groups of parents or students of which they are not a part. Finally, to the extent that only some Plaintiff-Intervenor students are low-income or English Language Learner students, Plaintiff-Intervenors lack standing to raise claims on behalf of groups of which they are not a part.

4. Plaintiff-Intervenors’ claims seek an unconstitutional remedy to the extent that they request the Court to declare that portions of the Colorado Constitution, namely TABOR and the Gallagher Amendment, must yield to other portions of the Constitution, namely the Education and Local Control Clauses.

5. Plaintiff-Intervenors’ claims and requested relief violate the separation of powers to the extent that they request the Court to compel affirmative actions such as to legislate or fund a particular system of public school finance and to oversee that process.

6. Defendants reserve the right to assert additional affirmative defenses.

WHEREFORE, Defendants request that the Court judgment in their favor and against Plaintiff-Intervenors on the Amended Complaint in Intervention, award Defendants their costs and attorney’s fees as provided by law, and enter such other relief to Defendants as the Court deems just and appropriate.

Respectfully submitted this 25th day of January, 2011.

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*Original signature of Nicholas P. Heinke is
on file at the Office of the Colorado Attorney
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CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **ANSWER TO AMENDED COMPLAINT IN INTERVENTION** upon all parties herein electronically through LexisNexis File & Serve or U.S. Mail this 25th day of January, 2011, addressed as follows:

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